

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
INCOME TAX APPEAL NO.91 OF 2004

Office Notes, Office Memoranda of
Coram, appearances, Court's orders of
directions and Registrar's orders

Court's or Judge's orders

Mr. Anand Jaiswal, Advocate for the Appellant.

CORAM : J.P. DEVADHAR &
B.P. DHARMADHIKARI, JJ.

DATED : 29TH MARCH, 2007.

P.C. :

1. This appeal is filed by the Revenue under Section 260A of the Income Tax Act, 1961 against the order of the ITAT dated 29/04/2004 in ITA No.260/Nag/2002 relating to AY 1988-89.

2. The assessee is an individual engaged in the business of trading in chemicals and industrial salt on wholesale basis. The assessee owned five truck tankers. The assessee claimed higher depreciation on the said vehicles on the ground that the said vehicles were used in the business of running on hire. Rejecting the claim of the assessee, the Assessing Officer held that the vehicles given by the assessee to Janata Chemicals under an agreement for transportation of goods purchased by the assessee is not sufficient to hold that the assessee was

engaged in the business of giving the vehicles on hire. The CIT (A) upheld the order of the Assessing Officer.

3. On further appeal filed by the assessee, the Tribunal set aside the orders passed by the lower Authorities and held that the assessee was entitled to higher depreciation inter-alia on the ground that the vehicles owned by the assessee were registered with the RTO as Public Carriers and that there was an transport agreement between the assessee and Janata Chemicals under the Free on Road (FOR) contract for transporting the goods purchased by the assessee from Nagda to Nagpur. The Tribunal held that in any FOR contract risk of any damage to goods till delivery of the goods is with the hirer and, therefore, in the present case, it could be said that the assessee had given the vehicles on hire.

4. On a query raised by this court, Mr.Jaiswal, Advocate appearing on behalf of the Revenue showed us the written submissions filed by the assessee before the Assessing Officer wherein it is stated that during the assessment year in question, the assessee had given the vehicles on hire to several other third parties also.

5. In this view of the matter, the finding recorded by the Tribunal that the assessee is engaged in the business of giving the vehicles on hire cannot be faulted. No substantial

question of law arises from the order passed by the Tribunal. The appeal is, thus, dismissed with no order as to costs.

Judge

Judge.

agk/